

Harvey R. Miller
Stephen Karotkin
Joseph H. Smolinsky
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

Attorneys for Debtors
and Debtors in Possession

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

| | |
|---|---------------------------------|
| -----X | |
| | : |
| In re | : Chapter 11 Case No. |
| | : |
| MOTORS LIQUIDATION COMPANY, <i>et al.</i>, | : 09-50026 (REG) |
| f/k/a General Motors Corp., <i>et al.</i> | : |
| | : |
| Debtors. | : (Jointly Administered) |
| | : |
| -----X | |

**MOTION OF DEBTORS FOR AN ORDER APPROVING
THE CONSENT DECREE AND SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA AND THE DEBTORS**

TO THE HONORABLE ROBERT E. GERBER,
UNITED STATES BANKRUPTCY JUDGE:

Motors Liquidation Company (f/k/a General Motors Corporation, hereafter,
“**MLC**”), and its affiliated debtors, as debtors (collectively, the “**Debtors**”), respectfully
represent:

Relief Requested

1. The Debtors move pursuant to section 105(a) of title 11, United States
Code (the “**Bankruptcy Code**”) for approval of that certain consent decree and settlement
agreement (the “**Settlement Agreement**”) by and between the United States of America (the
“**United States**”), on behalf of the United States Environmental Protection Agency (the “**EPA**”)

and the Debtors which partially resolves Proof of Claim No. 64064 timely filed by the United States (the “**US Claim**”). The US Claim alleges that the Debtors are liable to the United States for costs in excess of \$2 billion relating to liabilities at numerous third-party sites and for violations of certain federal environmental statutes. The Settlement Agreement reached by the parties provides the United States with, among other things, an allowed general unsecured claim in the total amount of \$36,290,270 and a disputed general unsecured claim in the face amount of \$250 million for all remaining non-settled claims set forth in the US Claim.¹ If approved, the Settlement Agreement permits the Debtors to free up reserves of approximately \$1.75 billion that were previously reserved on account of the US Claim, thus increasing the initial distribution to the Debtors’ creditors.

2. As explained below, the Debtors’ Settlement Procedures Order (as hereinafter defined) does not require Court approval for settlements less than or equal to \$50 million. However, the United States’ agreement under the Settlement Agreement is subject to a public comment period that will conclude on March 25, 2011, after which the United States is expected to promptly respond to all public comments received and move for approval of the Settlement Agreement under applicable environmental laws. The United States is not in a position to move this Court for approval of the Settlement Agreement until after the comment period. The United States has indicated that, if it determines that the Settlement Agreement is in the public interest after the public comment period has expired, it will file supporting documents prior to the hearing establishing that the Settlement Agreement is fair, reasonable, and consistent with applicable environmental laws.

¹ The remaining disputed claim is also consistent with the representations made in the record of the hearing regarding confirmation of the Debtors’ Plan (as defined herein) with respect to the Onondaga site.

3. Absent the relief requested on an expedited basis, approval of the Settlement Agreement would most likely not take place before the Effective Date (as defined in the Debtors' Second Amended Joint Chapter 11 Plan (ECF No. 9836) (the "**Plan**"). Not only would this be to the extreme prejudice of other creditors by decreasing distributions, but would also prevent the United States from participating in initial distributions, the basis upon which it agreed to the Settlement Agreement.

Jurisdiction

4. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

5. As mentioned above, the US Claim alleges that the Debtors are liable for a partially liquidated amount in excess of \$2,000,000,000.00 to the United States under various federal environmental statutes, including the Comprehensive Environmental Response, Compensation and Liability Act ("**CERCLA**"), 42 U.S.C. §§9601-9675, and the Resource Conservation and Recovery Act ("**RCRA**"), 42 U.S.C. §§ 6901, *et seq.* In many cases, the liabilities relate to costs associated with the past and future cleanup of contamination at disposal sites to which Debtors allegedly sent waste during the course of their century-long operational history, including costs incurred by the United States in the oversight of such activities. The US Claim also alleges that, from time to time, the Debtors' prepetition operations violated certain federal environmental statutes, including RCRA and the Clean Air Act ("**CAA**"), 42 U.S.C. §§ 7401-7671q.

6. On March 4, 2011, the United States lodged the Settlement Agreement with this Court (ECF No. 9604), a copy of which is annexed hereto as **Exhibit “A,”** and it is currently subject to public comment following the publication of notice of the Settlement Agreement in the *Federal Register*. The public comment period will conclude on March 25, 2011, and the Debtors expect the United States to file with the Court any comments received, as well as the United States’ response to such comments and its request for approval of the Settlement Agreement.

The Settlement Agreement

7. The Settlement Agreement resolves a large portion of the US Claim. Specifically, the Settlement Agreement resolves the Debtors’ liabilities for (i) contamination at 34 disposal facilities to which Debtors allegedly sent waste, (ii) contamination at one site formerly owned by the Debtors, and (iii) alleged violations of RCRA and the CAA. In satisfaction of these liabilities, the Debtors have agreed to provide the United States with an allowed general unsecured claim in the total amount of \$36,290,270. In addition to the allowed general unsecured claim, the United States will also have the ability to draw upon (a) cash totaling \$4,613,322 from fully-collateralized bonds obtained prepetition by the Debtors to secure environmental obligations to the United States at certain of the 34 disposal facilities, and (b) performance by a surety of remediation work in an amount up to \$10,500,000 subject to the terms of the bonds. In addition, certain private parties with claims relating to three of the 34 disposal facilities will receive allowed general unsecured claims totaling \$3,020,539.

8. The Settlement Agreement provides that the United States may file a new proof of claim related to those sites in the US Claim that were not settled under the Settlement

Agreement and that the Debtors must reserve for a disputed claim in an amount of \$250,000,000 for such sites.

The Relief Requested Should Be Approved by the Court

9. Although the Debtors have authority to enter into settlements where, as in here, the total settlement amount is less than or equal to \$50 million (*see* Order Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rules 3007 and 9019(b) Authorizing the Debtors to (i) File Omnibus Claims Objections and (ii) Establish Procedures for Settling Certain Claims (ECF No. 4180) (the “**Settlement Procedures Order**”)), a consent decree and settlement agreement negotiated by the United States to protect the public interest is subject independently to judicial review.

10. The Debtors respectfully submit that entry of an order approving the entry into and performance under the Settlement Agreement is appropriate to implement the Debtors’ Plan and will greatly benefit the Debtors’ other creditors by reducing the Debtors’ reserve for the US Claim by approximately \$1.75 billion, thereby allowing such sums to be included in the distributions to unsecured creditors, including the United States. *See Adelphia Commc’ns Corp.*, 368 B.R. 140, 273 n.203 (Bankr. S.D.N.Y. 2007) (noting that “[b]ankruptcy judges focus on the *maximization of recoveries* for the creditors in the cases under their watch”). In addition, the Court’s approval of the Settlement Agreement will render the parties’ agreement a “judicially-approved settlement” within the meaning of section 113(f)(2) of CERCLA, thereby entitling the Debtors to protection from contribution actions and claims for “matters addressed” therein. *See* 42 U.S.C. § 9613(f)(2). For the foregoing reasons, the Settlement Agreement should be approved by the Court.

Notice

11. Pursuant to Bankruptcy Rule 9006(c)(1), the Court may shorten time without notice. Accordingly, a separate ex parte motion requesting to shorten the notice period to hear this Motion is being filed contemporaneously herewith.

No Prior Request

12. No prior request for the relief sought in this Motion has been made to this or any other Court.

WHEREFORE the Debtors respectfully request entry of an order granting the relief requested herein and such other and further relief as is just.

Dated: New York, New York
March 22, 2011

/s/ Joseph H. Smolinsky

Harvey R. Miller
Stephen Karotkin
Joseph H. Smolinsky

WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

Attorneys for Debtors
and Debtors in Possession

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

| | |
|---|---|
| -----X | |
| | : |
| In re | : |
| | : |
| MOTORS LIQUIDATION COMPANY, <i>et al.</i>, | : |
| f/k/a General Motors Corp., <i>et al.</i> | : |
| | : |
| Debtors. | : |
| | : |
| -----X | |

| | |
|--|-------------------------------|
| | Chapter 11 Case No. |
| | 09-50026 (REG) |
| | (Jointly Administered) |

**ORDER APPROVING CONSENT DECREE AND SETTLEMENT AGREEMENT
BETWEEN THE DEBTORS AND THE UNITED STATES OF AMERICA**

Upon the Motion, dated March 22, 2011 (the “**Motion**”), of Motors Liquidation Company (f/k/a General Motors Corporation) and its affiliated debtors, as debtors (collectively, the “**Debtors**”), pursuant to section 105(a) of title 11, United States Code (the “**Bankruptcy Code**”), for entry of an order approving that certain consent decree and settlement agreement (the “**Settlement Agreement**”) by and between the United States of America (the “**United States**”), on behalf of the United States Environmental Protection Agency (the “**EPA**”), and the Debtors partially resolving Proof of Claim No. 64064 timely filed by the United States (the “**US Claim**”), all as more fully described in the Motion; and due and proper notice of the Motion having been provided, and it appearing that no other or further notice need be provided; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, creditors, and all parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Motion is granted as provided herein; and it is further

ORDERED that the Debtors are authorized to take all actions necessary or

appropriate to implement the terms of this Order and the Settlement Agreement; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all
matters arising from or related to this Order.

Dated: New York, New York
_____, 2011

UNITED STATES BANKRUPTCY JUDGE